

interest will be considered in the loss calculations.

(c) *Legal expenses during bankruptcy proceedings.* (1) When a bankruptcy proceeding results in a liquidation of the borrower by a trustee, legal expenses will be handled as directed by the court.

(2) Chapter 11 pertains to a reorganization of a business contemplating an ongoing business rather than a termination and dissolution of the business where legal protection is afforded to the business as defined under Chapter 11 of the Bankruptcy Code. Consequently, expenses incurred by the lender in a Chapter 11 reorganization can never be liquidation expenses unless the proceeding becomes a Chapter 11 liquidation. If the proceeding should become a Liquidating 11, reasonable and customary liquidation expenses may be deducted from proceeds of collateral as provided in the Lender's Agreement. Chapter 7 pertains to a liquidation of the borrower's assets. If, and when, liquidation of the borrower's assets under Chapter 7 is conducted by the bankruptcy trustee, then the lender cannot claim expenses.

§§ 4287.171–4287.179 [Reserved]

§ 4287.180 Termination of guarantee.

A guarantee under this part will terminate automatically:

(a) Upon full payment of the guaranteed loan;

(b) Upon full payment of any loss obligation; or

(c) Upon written notice from the lender to the Agency that the guarantee will terminate 30 days after the date of notice, provided that the lender holds all of the guaranteed portion and the Loan Note Guarantee is returned to the Agency to be canceled.

§§ 4287.181–4287.199 [Reserved]

§ 4287.200 OMB control number.

The information collection requirements contained in this regulation have been approved by OMB and have been assigned OMB control number 0575–0168. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 8 hours per response, with an average of

4 hours per response, including time for reviewing the collection of information. Send comments regarding this burden, estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Department of Agriculture, Clearance Officer, OIRM, Stop 7630, Washington, DC 20250. You are not required to respond to this collection of information unless it displays a currently valid OMB control number.

Subpart D—Servicing Biorefinery Assistance Guaranteed Loans

SOURCE: 76 FR 8475, Feb. 14, 2011, unless otherwise noted.

§ 4287.301 Introduction.

(a) This subpart supplements 7 CFR part 4279, subparts A and C, by providing additional requirements and instructions for servicing and liquidating all Biorefinery Assistance Guaranteed Loans.

(b) The lender will be responsible for servicing the entire loan and will remain mortgagee and secured party of record notwithstanding the fact that another party may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of a loan will neither be paid first nor given any preference or priority over the guaranteed portion of the loan.

(c) Copies of all forms, regulations, and Instructions referenced in this subpart are available in any Agency office. Whenever a form is designated in this subpart, that designation includes predecessor and successor forms, if applicable, as specified by the field or National Office.

§ 4287.302 Definitions.

The definitions and abbreviations contained in § 4279.2 of subpart A and in § 4279.202 of subpart C of part 4279 of this chapter apply to this subpart.

§ 4287.303 Exception authority.

The exception authority provisions of this paragraph apply to this subpart instead of those in § 4279.15 of subpart A

of part 4279 of this chapter. The Administrator may, with the concurrence of the Secretary of Agriculture, make an exception, on a case-by-case basis, to any requirement or provision of this subpart that is not inconsistent with any authorizing statute or applicable law, if the Administrator determines that application of the requirement or provision would adversely affect the Federal government's interest.

§§ 4287.304–4287.305 [Reserved]

§ 4287.306 Appeals.

Section 4279.16 of subpart A of part 4279 of this chapter applies to this subpart.

§ 4287.307 Servicing.

Except as specified in paragraphs (a) through (m) of this section, all loans guaranteed under this subpart shall comply with the provisions found in §§ 4287.101 through 4287.180 of this chapter. If the Agency determines that the lender is not in compliance with its servicing responsibilities, the Agency reserves the right to take any action the Agency determines necessary to protect the Agency's interests with respect to the loan. If the Agency exercises this right, the lender must cooperate with the Agency. Any cost to the Agency associated with such action will be assessed against the lender.

(a) *Periodic reports.* Each lender shall submit quarterly reports, unless more frequent ones are needed as determined by the Agency to meet the financial interests of the United States, regarding the condition of its Agency guaranteed loan portfolio (including borrower status and loan classification) and any material adverse change in the general financial condition of the borrower since the last report was submitted.

(b) *Default reports.* Lenders shall submit monthly default reports, including borrower payment history, for each loan in monetary default using a form approved by the Agency.

(c) *Financial reports.* The financial report requirements specified in § 4287.107(d) apply except as follows:

(1) The financial reports required under § 4287.107(d) may be specified in either the loan agreement or the Conditional Commitment;

(2) The lender must submit to the Agency quarterly financial statements within 45 days of the end of each quarter; and

(3) The annual financial statements required under § 4287.107(d) must be audited financial statements and must be submitted within 180 days.

(d) *Additional loans.* Instead of complying with the additional expenditures provisions specified in § 4287.107(e), the lender may make additional expenditures or new loans to a borrower with an outstanding loan guaranteed only with prior written Agency approval. The Agency will only approve additional expenditures or new loans where the expenditure or loan will not violate one or more of the loan covenants of the borrower's loan agreement. In all instances, the lender must notify the Agency when they make any additional expenditures or new loans. Any additional expenditure or loan made by the lender must be junior in priority to the loan guaranteed under 7 CFR part 4279 except for working capital loans for which the Agency may consider a subordinate lien provided it is consistent with the conditional provisions specified in § 4279.202(i)(1).

(e) *Interest rate adjustments.* The provisions of § 4287.112 apply, except for § 4287.112(a)(2).

(f) *Collateral inspection and release.* In lieu of complying with § 4287.113, lenders must comply with the provisions of this paragraph. The lender must inspect the collateral as often as necessary to properly service the loan. The Agency must give prior approval for the release of collateral, except as specified in paragraph (f)(1) of this section or where the release of collateral is made under the abundance of collateral provision of the applicable security agreement, subject to the provisions of paragraph (f)(3) of this section. Appraisals on the collateral being released are required on all transactions exceeding \$250,000 and will be at the expense of the borrower. The appraisal must meet the requirements of § 4279.244. The sale or release of collateral must be based on an arm's length transaction, unless otherwise approved by the Agency in writing.

(1) Lenders may, over the life of the guaranteed loan, release collateral